

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

6 ePLUS, INC. : Civil Action No.
7 vs. : 3:09CV620
8 LAWSON SOFTWARE, INC. : January 14, 2011

11 COMPLETE TRANSCRIPT OF THE JURY TRIAL
12 BEFORE THE HONORABLE ROBERT E. PAYNE
13 UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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PROCEDINGS

THE CLERK: Civil action number 3:09CV00620, ePlus, Incorporated, versus Lawson Software, Incorporated. Mr. Scott L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and Mr. Michael G. Strapp represent the plaintiff.

Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent the defendant. Are counsel ready to proceed?

MR. ROBERTSON: Plaintiff is, Your Honor.

MR. McDONALD: Yes, we are.

THE COURT: All right. Ladies and gentlemen, I'm pleased to report to you my unofficial survey that the economy is recovered. For the first time in 40 years of trading at the Westhampton Bakery, I had to wait 20 to 30 minutes even to get served, and this the lowest period of the year for that bakery, they tell me. So I just wanted you to know, but I told them I was waiting because I had promised you would get your donuts and I don't want to be guilty.

Dr. Shamos, I saw him earlier. Dr. Shamos, I remind you -- everybody is renaming you, aren't they?

THE WITNESS: We'll see.

THE COURT: I remind you you are under the same oath you took yesterday, sir.

THE WITNESS: Yes, sir.

1 THE COURT: Thank you.

3 MICHAEL I. SHAMOS,

4 a witness, called by the defendant, having been previously
5 duly sworn, testified as follows:

DIRECT EXAMINATION

7 BY MR. McDONALD: (resuming)

8 Q Good morning, Dr. Shamos. How are you?

9 A Good morning. I'm good.

10 Q I would like to pick up where we left off, if I got it
11 right anyway here this morning, with this slide showing some of
12 the elements of claim one of the '516 patent on this slide that
13 you put together. Can you walk us through --

14 THE COURT: Mr. McDonald, excuse me. Just for
15 orientation purposes, when we left off, you had said that you
16 were going through each claim one by one to show, and that's
17 what you are doing.

18 MR. McDONALD: Thank you, yes.

19 THE COURT: I said it's a good time to take a break,
20 so that's what we'll be doing now, is hearing Dr. Shamos's
21 opinion on each claim that's at issue.

22 Q We have the 12 claims. We're going to take them one at a
23 time; right, Dr. Shamos?

24 A Yes.

25 Q Okay. So let's start here with what you have on your

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1 slide, claim one of the '516 patent. Can you walk us through
2 your thought process as you put this slide together to explain
3 your opinion about that claim?

4 A Yes. What I did here was I took each one of the asserted
5 claims. I think the text of each claim is present in its
6 entirety, and I splint them out element by element, and where I
7 had a comment relating to that element, I put it in blue.

8 So the first element of the '516, claim one, is a
9 collection of catalogs of items stored in an electronic format,
10 and as I explained yesterday, there certainly is no collection
11 of catalogs. So that element isn't present.

12 Q Why don't we stop there for a moment, because I passed
13 over a slide yesterday, but I think we can come back to that
14 now today. If we can go to slide ten that talks about the
15 catalog issue. This is another slide you created; right, Dr.
16 Shamos?

17 A Yes.

18 Q So this relates to claim one of the '516 patent that we
19 started talking about today.

20 MR. ROBERTSON: Your Honor, I am going to object to
21 this slide. I apologize.

22 THE COURT: Wait a minute. Take the slide off,
23 please.

24 MR. ROBERTSON: The last bullet point, Your Honor, as
25 addressed before, it says item master not published by a

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1 vendor. This was something that Your Honor addressed with Mr.
2 Christopherson. That's not consistent with the Court's claim
3 construction. The item master doesn't have to be published by
4 a vendor. I think you took that up before.

5 THE COURT: This is his reason for doing it. We'll
6 deal with all of that later, I think.

7 MR. McDONALD: Your Honor, just to be clear --

8 THE COURT: Excuse me. I'm sorry. This is his
9 reason for his opinion, and I think he's entitled to give that.
10 Whether he's right or not, it's what you and Mr. McDonald will
11 have to argue to the jury.

12 MR. McDONALD: So you know, we tried to go through
13 all these slides last night, and I thought actually this one
14 had been approved by ePlus's attorneys, and I'm trying to only
15 go through the slides today we've already cleared up. So I
16 apologize for any glitches we have.

17 THE COURT: I don't know that there was a glitch.
18 Anyway, the objection is overruled, and you may proceed. Put
19 it back up, please, sir.

20 Q So, Dr. Shamos, this was the slide you put together that
21 relates to the word catalog as defined by the Court in all the
22 various claims that use the word catalog; is that right?

23 A Yes.

24 Q So it's not just claim one of the '516 patent, right, that
25 we're talking about when we talk about catalogs?

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1 A That's right. It's any time the word catalog is used.

2 Q Okay. So why don't you take us a bullet point at a time
3 and a take a pause here, and maybe I can ask you a question
4 between each bullet point to tell us about your analysis here
5 of the catalogs issue in this case.

6 A Okay. Well, we have to look at where the data in item
7 master comes from, because item master starts out empty when
8 the system is installed. The purpose for the system is to
9 allow a user at a particular company, particular licensee of
10 this software, to be able to select items that he wants to have
11 supplied to him, wants to order.

12 Q Let me stop you there. Do you look at that as the same
13 purpose or a different purpose from a catalog as the Court has
14 defined it?

15 A The purpose for a catalog is to allow somebody to know
16 what a vendor is offering, what their menu of selection is that
17 they can buy. That's the purpose of the catalog.

18 Q Is that the purpose of the Lawson item master?

19 A Yes.

20 Q Is the purpose of the item master of the Lawson system to
21 show the products that a vendor is offering to sell?

22 A No. It's to show the set of products that this company is
23 possibly interested in buying.

24 Q So I'll let you continue then through the bullet points.

25 A Yes. So, there are many different ways in which data can

1 get into item master. One way is that vendors make available,
2 in an electronic form, the list of products that they offer.
3 The customer can then choose from among those products the ones
4 that it would like to load into item master. That's one way.

5 Another is it doesn't even have to start from a vendor.
6 It can be from databases that already exist at the customer.
7 The customer can decide to load those into item master.

8 Now, it's conceivable that somebody could take a vendor's
9 catalog and load absolutely everything that was in that catalog
10 that would fit into item master, into item master. In that
11 case, I wouldn't see any particular difference between the
12 vendor's catalog and item master. I don't have any evidence
13 that that ever occurred or ever does occur.

14 Q In your report, I think when you were addressing this
15 issue, you talked in terms of a phonebook and an address book;
16 do you recall that?

17 A Yes.

18 Q Can you explain how that would relate here to your
19 analysis of the issue you were just talking about?

20 A Yes. Well, I have an address book, as many people do. It
21 contains a list of people that I have a feeling that sometime
22 in the future I may want to contact or may want to call or may
23 want to write to, and one way to construct an address book is
24 to go through the phonebook, look up the phone numbers of the
25 people that you are familiar with, and you write those into

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1 your address book.

2 You can think of the phonebook as the phone company's
3 catalog. It's the list of people that are available to be
4 called by that phone company. But an address book is not the
5 same thing as that. The address book is uniquely crafted by
6 me. It's my selection of those people that are callable that
7 I'm interested in calling.

8 Q Is it your understanding that under Dr. Weaver's analysis,
9 would he consider that address book in your example there a
10 catalog as the Court has defined it or not?

11 A That's my understanding.

12 Q What is your understanding?

13 A Of his opinion.

14 Q What is your understanding?

15 A My recollection from --

16 THE COURT: Just a minute. He doesn't have any way
17 of answering what Dr. Weaver testified to in court, because he
18 doesn't know, he was excluded, and what he remembers of Dr.
19 Weaver's report isn't appropriate for examination because the
20 reports don't come into evidence.

21 It's only the testimony that comes into evidence, and
22 so I don't think either one of you need to be questioning what
23 the other expert did in his report. Those reports are done for
24 purposes of giving opinions and having preliminary matters.
25 The only purpose of it here in court, of the report here in

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1 court is if an expert testifies beyond the scope of the report,
2 you need -- either one of you objects to it, to tell me what
3 the problem is, and I rule that he can't or can testify
4 depending upon whether the report covered that topic.

5 Otherwise, we're get -- what we're doing is actually
6 letting in the back door hearsay testimony about the other
7 person's report, and if the Doctor didn't testify to that in
8 court, and he doesn't have any way of knowing what Dr. Weaver
9 testified to, he can't be examined about that. So let's don't
10 be asking him, anybody about the other expert's report or their
11 testimony because they don't know.

12 Q In your --

13 THE COURT: There's a way to frame questions that
14 deal with whatever was said, but that's up to you. You know
15 how to do that.

16 Q In your example, Dr. Shamos, regarding your personal
17 address book, if I understood right you are saying your address
18 book is not like a published phonebook?

19 A That's right.

20 Q Even though -- now, in your example, did some of the data
21 in your address book originate from the phone company's
22 published phonebook?

23 A Yes. That's where phone numbers come from.

24 Q Does that change your answer as to whether your personal
25 address book is a published phonebook or not?

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1 A No.

2 Q Why don't you go ahead and continue with this slide.

3 A Yes. So the third bullet point, even if a customer loads
4 all item data from a published vendor catalog, that is if it
5 only comes from one place, that still doesn't mean it's a
6 catalog within the Court's construction.

7 Q Why is that?

8 A It was not emitted by a vendor.

9 Q It was not? I'm sorry?

10 A It was not emitted, it was not distributed by a vendor.

11 THE COURT: Just a minute. The Court's construction
12 doesn't have anything to do with distributed by a vendor. It
13 has published by a vendor. That testimony -- what he just did
14 is give claim construction.

15 Let's keep it to the claim construction, please, the
16 questions, because it's hard enough for the jury to follow
17 technical issues in any patent case without having to undo what
18 has been done here. So just, please, straighten it out.

19 Q Maybe it would be useful, Dr. Shamos, if we just go to
20 slide ten, please. This is some analysis that you did as to
21 why an item master in the Lawson system is different from the
22 catalog as defined by the Court; is that right?

23 A Yes.

24 Q Can you walk us through one bullet point at a time,
25 please, what you put together in this slide.

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1 MR. ROBERTSON: Your Honor, can I just have a running
2 objection to that? First, it calls for a narrative, but
3 secondly, this has to do with our earlier issue with respect --

4 THE COURT: He's now explaining the basis for his
5 opinion.

6 MR. ROBERTSON: I understand, Your Honor.

7 THE COURT: Within certain parameters, he can do
8 that, but if he starts -- you understand the reason why I'm
9 concerned in this particular case, do you not?

10 MR. McDONALD: I understand you want us --

11 THE COURT: Let me see counsel up here for just a
12 minute.

13

14 (Discussion at sidebar as follows:)

15

16 THE COURT: My concern is I have excluded a great
17 number of his opinions, and I don't -- unless the questions are
18 framed in a way that Mr. Robertson knows what is coming, then I
19 get confronted with the situation that I have to go back and
20 undo, and that creates confusion in the minds of the jury. And
21 I believe the expert, just like Dr. Weaver did, has the
22 opportunity to explain his opinions, but I think other than
23 just turning him on and turning him loose, if you could keep a
24 handle on it, that will solve that problem. Then if there is
25 an objection -- I mean, you've seen this big thing they've

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1 filed about what opinions are in and what aren't, and in this
2 particular case, I think we'll be better able to handle it
3 without having to undo anything, if, in fact, it needs undoing.
4 Do you see what my problem is here?

5 MR. McDONALD: I do exactly, Your Honor. I'm going
6 to give you a little context here. That's one of the reasons
7 why we meticulously went through every slide that I'm going to
8 go through with ePlus's counsel before we got in here. So
9 there's no surprises, at least on the slides, so it's really
10 going to guide things. This slide, they've approved this
11 slide, and I'm not touching any slides today they haven't
12 already seen.

13 MR. ROBERTSON: I understand --

14 THE COURT: But you going to have to -- if, in fact,
15 there's an excursion in an answer you're going to have to stand
16 up and do something about it immediately. It's impossible for
17 me to undo something once it's been said. That said, I think
18 it's only fair that an expert have a chance reasonably to
19 explain his opinion. That's just the way it's been done.

20 MR. ROBERTSON: I appreciate that, Your Honor, but I
21 think his opinions still need to stay within the boundaries of
22 the Court's claim construction. They have to be relevant to
23 the Court's claim construction, and they can't deviate from the
24 Court's claim construction. So as long as -- I will be
25 objecting if he starts to suggest that your claim construction

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1 can be satisfied by his, as he just did, essentially rewriting
2 it to suit his opinions.

3 THE COURT: You see, he got into distributed in his
4 answer. You didn't ask him --

5 MR. McDONALD: You said something about emitted or
6 something.

7 THE COURT: That isn't distributed.

8 MR. McDONALD: With the slides, I'm really trying to
9 get him to stick to his bullet points here --

10 THE COURT: I know. That's one of the reasons I'm
11 saying all this, is if you have control of it, it's easier.

12 MR. McDONALD: I'll try to focus my questions a
13 little more, but I do have a concern if Mr. Robertson is going
14 to say, well, I know the slides, I'm going to keep objecting to
15 what's on the slides, because we had a lot of give-and-take
16 over what's in these slides. I don't want him to come in after
17 we've already given up some things and say, okay, now that
18 you've given up your stuff, I'm going to take more away. I
19 think if it's on the slides, we've already agreed to that.

20 THE COURT: Mr. Robertson, he says basically you have
21 agreed that as to the things on the slides, the area of
22 testimony can be covered; is that true?

23 MR. ROBERTSON: I've agreed that this slide can be
24 covered. What I didn't like about the question, Your Honor, is
25 it was give us all the reasons why you are now going to say

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1 that these points here satisfy or don't satisfy the Court's
2 claims construction of catalog.

3 THE COURT: I think he can do that point by point.

4 MR. McDONALD: At least we have an agreement that as
5 to the slides themselves, we've already agreed.

6 THE COURT: Have you?

7 MR. ROBERTSON: Yes.

8 MR. McDONALD: I'll just try to keep it real tied to
9 these slides, and that should keep us out of trouble.

10 THE COURT: Thank you.

11

12 (End of sidebar discussion.)

13

14 THE COURT: I thought this would make things go a
15 little better, I think.

16 Q Dr. Shamos, I think we were on the first bullet point
17 here. Had you finished talking specific about what the point
18 was you were making on that first bullet point on slide number
19 ten that's up on the screen right now?

20 A I actually thought we were about to do bullet point number
21 four.

22 Q That shows you how good my memory is. Why don't we zero
23 in now on bullet point number four, item master is created by
24 the customer and includes this data. Can you tell how that
25 specific point, sticking with that point, relates to your

1 opinion in this case?

2 A Yes. Certainly there's information about an item that
3 comes from a vendor. For example, typically the part number of
4 the vendor, the number you would use to specify what product it
5 is you'd like to order, that's created by the vendor. That's
6 part of the vendor's data.

7 So some of the data that goes into item master does come
8 directly from a vendor. There's other information that doesn't
9 come directly from a vendor. For example, the way the customer
10 chooses to describe the product, the name of it, relates to the
11 terminology that happens to be used in that company. It may
12 not be the same as the name of the product in the vendor's
13 catalog, but, undoubtedly, some of the data that's going to end
14 up in item master has come from the vendor originally.
15 However, it's the vendor -- it's the customer that's doing the
16 selection of which pieces of data it chooses to include in item
17 master.

18 Q You have another slide that goes into that issue in a
19 little more detail; right?

20 A Yes.

21 Q So for those reasons, your bottom line here is this is why
22 the Lawson item master is not a catalog as the Court has
23 defined that term?

24 A That's right.

25 Q Let's go to slide number ten now. I'm sorry. Can you

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1 give me a few other examples of the sort of information that a
2 customer adds to the item master that would not come from a
3 vendor?

4 A Yes. The customer can add special pricing information, if
5 it gets a discount, it adds information about quantity on hand
6 that it may have in its own inventory.

7 Q How about approval process, are you aware of whether
8 customers sometimes have information in there about approval
9 process?

10 MR. ROBERTSON: Objection, relevancy.

11 MR. McDONALD: It's just another example of the
12 things we've already been talking about.

13 THE COURT: As I recall it, the software, from the
14 testimony that your witness has put on, there's a special way
15 to get the customer approval, and that's not being accused in
16 the case.

17 MR. McDONALD: I'm talking actually about the
18 information in the item master that relates to the approval
19 process.

20 THE COURT: I see. All right. Overruled.

21 A I don't have a specific recollection of that.

22 Q I think you already talked about the issue of special
23 pricing. I think we covered that one, didn't we?

24 A Yes.

25 Q Let's move on then. Do you have an understanding as to

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1 what ePlus contends is the number of catalogs that would be in
2 a typical Lawson item master or not?

3 MR. ROBERTSON: Objection. There's no contention by
4 ePlus as to a typical number of catalogs that can be in item
5 master. There's no foundation for that.

6 MR. McDONALD: If he doesn't, he doesn't. I guess if
7 they're agreeing to that, I guess fine.

8 THE COURT: It's not a contention, it's not relevant,
9 so I agree with that. It's not been raised in anything that's
10 come up in the case yet, so I sustain the objection to that.

11 Q So in your opinion, Dr. Shamos, is the item master in the
12 Lawson system published by anyone?

13 A No.

14 Q Let's pick up again and go back to slide 21, please. So
15 we've talked about '516, claim one, element A so far. Can we
16 now go to element B, please, and tell us your analysis specific
17 to element B of claim one of the '516 patent?

18 A Yes. Well, element B is a first set of predetermined
19 criteria associated with said collection of catalogs. While in
20 the patent, the first set of predetermined criteria are used
21 for selecting less than the entire collection of catalogs, and
22 it's not possible to do that in the S3 system, so there aren't
23 such a set of criteria.

24 THE COURT: Excuse me just a minute. Is it not
25 possible because there's no -- in your view, because there's no

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1 catalogs?

2 THE WITNESS: No.

3 THE COURT: Or is it not possible for some reason
4 independent of your view that there's no catalog?

5 THE WITNESS: Let's assume hypothetically that item
6 master were a catalog, or even --

7 THE COURT: Assume that it has catalogs in it.

8 THE WITNESS: Let's assume that it has catalogs in it
9 hypothetically.

10 THE COURT: Your first element is, it doesn't include
11 a collection of catalogs. What I'm asking you is very simple.
12 Is your opinion on the second point based on the fact that
13 there's no collection of catalogs, or is it based on some
14 independent reason?

15 THE WITNESS: It's independent, Your Honor.

16 THE COURT: Good. Go ahead and explain that then.
17 Thank you. I just needed to understand that. So it's the
18 second reason, all right.

19 Q What is the additional reason you are talking about
20 specific to element B of claim one?

21 A Because even if item master were considered to be a
22 collection of catalogs, there's no way of selecting less than
23 all of them. There's no mechanism within S3 to do that.

24 Q Why don't we go to the next slide, please. Here you've
25 got the element that you have labeled C of claim one of the

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1 '516 patent; right, Dr. Shamos?

2 A Yes.

3 Q Can you explain to us the reason why you say that element
4 is not satisfied in the Lawson item master -- or the Lawson
5 system?

6 A Yes. The second set of predetermined criteria that really
7 are the searching criteria, what items would I like to find for
8 possible ordering, and there, the reason that element C is not
9 present, that ties in to element A which is if there's no
10 catalog, you can't have predetermined criteria for associated
11 with items from the catalog.

12 Q So for this one, you say it's not satisfied because
13 there's no catalogs again?

14 A That's right.

15 Q Let's move to the next slide. This goes to the fourth
16 element that you've labeled as D of claim one of the '516
17 patent; correct?

18 A Yes.

19 Q Now, this is kind of a longer element that you've got on
20 the slide that fits the black type on your slide; correct?

21 A The black type is the remainder of the claim language for
22 element D.

23 Q So can you summarize for us what your reasoning was
24 specific to this element? I'm not asking you to read the whole
25 element unless it's absolutely necessary, but can you summarize

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1 any way why, in your opinion, the Lawson systems at issue here
2 do not satisfy this element?

3 A Yes. Well, there's no catalog selection protocol.

4 Q Maybe -- I'm sorry. I don't mean to interrupt. Go ahead.

5 A The parties agreed that the word protocol means procedure,
6 so there has to be a procedure for doing catalog selection, and
7 in the first part of element D, that procedure is based on that
8 first set of predetermined criteria for selecting less than the
9 entire collection of catalogs. That was the element B which
10 independent of the fact there are no catalogs, there's no
11 selection procedure in S3.

12 Now -- and there are a number of other reasons that relate
13 to this claim. The wherein clause makes a reference to a
14 second catalog from a third party. Well, if there isn't more
15 than one catalog, then there can't be a second catalog.

16 MR. McDONALD: Bill, can you highlight that wherein
17 clause, please, up on the slide so we can see what Dr. Shamos
18 is talking about? It's the third paragraph basically in black
19 type.

20 THE COURT: I think the jury can see it. If you're
21 having trouble -- he can point. Circle what you are talking
22 about. Or did he get? They got it already. Thank you.

23 A Okay. The clause makes reference to both a vendor catalog
24 and a second catalog. So that would mean that you have to have
25 at least two catalogs.

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1 Q And the language of this claim, does that first catalog,
2 that's a vendor catalog from a predetermined vendor; correct?

3 A Yes.

4 Q And so does the system also have to have, in addition to
5 that, a second catalog from a predetermined third party that is
6 one of a manufacturer and a competing vendor; correct?

7 A Yes. And then there's a further limitation that the third
8 party has to sell items corresponding in that first catalog,
9 the vendor catalog.

10 Q Do you -- in your opinion, for the reasons you've just
11 given, this particular clause is not satisfied in any of the
12 Lawson systems at issue; is that right?

13 A That's right, because you don't more than -- certainly
14 don't have more than one catalog. Also, there's another reason
15 relating to the second clause, the including matching of vendor
16 identification code with a subset of said collection of
17 catalogs.

18 There's no collection of catalogs, but even if there were,
19 there's no subset of catalogs because there's no way of
20 specifying such a subset in the Lawson system.

21 Q Now go to the next slide. This is actually some further
22 discussion of the element that was on the prior slide; right,
23 Dr. Shamos?

24 A Yes.

25 Q Have we already covered what's on that slide --

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1 THE COURT: Take that slide down. Look at the first
2 point on it.

3 MR. McDONALD: We'll leave that one off.

4 THE COURT: Okay. Remember what I said.

5 MR. McDONALD: Slipped through, Your Honor. Sorry.

6 THE COURT: That's all right. The fact of the matter
7 is, ladies and gentlemen, this is big litigation. You can see
8 the amount of paper, and sometimes mistakes happen in
9 litigation. It just does. They're not trying to do anything
10 wrong. Both sides have had a few mistakes, but as a general
11 proposition, it's all been done pretty well.

12 A lot of this is done with the help of legal
13 assistants, and both sides have excellent legal assistants
14 help, so I didn't mean to be -- I'm not being critical. I'm
15 just trying to be observant and keep it within the bounds of
16 rules which I hope the lawyers will help me out with.

17 MR. McDONALD: Thank you, Your Honor.

18 Q Why don't we go back to slide 23. Now, in the first part
19 of that element at the very top of the slide, Dr. Shamos, do
20 you see the language about to select less than said entire
21 collection of catalogs?

22 A Yes.

23 Q Did you look at the issue of whether or not the fact that
24 the Lawson item master has indexing would mean that it would
25 satisfy that part of that element?

1 A Yes.

2 Q What was your conclusion about that?

3 A The purpose of indexing is to speed up a search. It
4 doesn't limit the universe of things that you're searching.

5 Q Well, there was -- if you use as an example, a typical
6 book might have an index in the back, and you want to look up a
7 word in the index of the book. Aren't you just searching the
8 index and not the whole book in that case?

9 A I think it depends on what you mean by search. Let's
10 suppose I have a book that has a thorough index, that every
11 word in the book occurs somewhere in the index, and if I'm
12 looking for the presence or absence of a word in that book, I
13 know that I can determine that by looking in the index, because
14 if it's not in the index, it's not in the book.

15 However, the index is making a statement about the entire
16 book. I haven't restricted it to, does the word occur in the
17 first chapter. It's still the entire book, and so the purpose
18 of an index is to let me know quickly whether or not something
19 is in a particular database or a particular database file.

20 It doesn't narrow down where you are looking. You're
21 still looking over the entire database. So indexing is just --
22 it's a way of making the search more efficient. People who --
23 I've heard of people who actually maintain their pantry with
24 food items in alphabetical order so they can go very quickly
25 and see if they have something in the pantry, but they still

1 are still searching the entire pantry. They don't look through
2 each individual box or package, but because of the way they've
3 arranged their pantry, they can tell immediately whether
4 something is in the totality of the items that they have
5 available for cooking. It's the same thing with an index of a
6 database. It just permits you to learn faster whether or not
7 something is in the entire database.

8 Q Thank you. Let's go to slide 25, please. Maybe we can
9 reasonably go through this. Is this the final element of claim
10 one of the '516 patent up on the screen here, Dr. Shamos?

11 A Yes. You can tell that from the period after the word
12 protocol.

13 Q Can you tell us in a nutshell here, are there any
14 additional reason for non-infringement that are specific to
15 this claim that you haven't already talked about?

16 A No. The reason is it relates to the catalog selection
17 protocol which doesn't exist, so you can't have this element.

18 Q I was asking so you didn't have to go through the whole
19 explanation again, so let's move on then to the next slide,
20 please. We've got up on the screen here, Dr. Shamos, another
21 slide. Is this a slide that you prepared regarding claim two
22 of the '516 patent?

23 A Yes.

24 Q Is this another one of the 12 asserted claims in this
25 case?

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1 A Yes.

2 Q Can you tell us whether or not in your opinion that claim
3 is infringed by any of the Lawson systems at issue here?

4 A My opinion is it's not.

5 Q And can you explain briefly why that is?

6 A Yes. There are two reasons. One is this is a dependent
7 claim, and I assume that's all been talked about to the jury,
8 what a dependent claim is.

9 MR. McDONALD: Your Honor, do you think it's
10 necessary for Dr. Shamos to explain that issue to the jury?

11 THE COURT: Do you feel like understand it? I know
12 it's been talked about. Okay, they seem to feel comfortable,
13 and I think it's been adequately addressed, but if they didn't,
14 I was going to say let's go ahead and do it again.

15 Q Basically for all the reasons claim one isn't infringed,
16 those same reasons would apply here to the second claim of the
17 '516 patent; correct?

18 A That's correct. But, also, the other reason is that this
19 has a limitation of, the collection of catalogs are stored in
20 separate databases. Well, that's -- there's one database in
21 item master. There weren't separate databases.

22 Q So there's one more reason specific to this claim?

23 A Yes.

24 Q Let's go to the next slide, please, number 27. Does this
25 claim six of the '516 patent, Dr. Shamos, also depend from

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1 claim one?

2 A Yes, it does.

3 Q Is it your opinion that the same reasons apply to claim
4 six of the '516 patent for your opinions that you've already
5 talked about regarding claim one?

6 A Well, I mean, that's the way it is. If a parent claim is
7 not infringed, a dependent claim can't be infringed. I don't
8 have an additional reason for claim six other than that it
9 depends from claim one.

10 Q Let's go to slide 28, please. Which claim is at issue
11 here, Dr. Shamos?

12 A '516, claim nine.

13 Q This looks like a new claim that's an independent claim
14 we're talking about here; is that right?

15 A Yes, it's an independent claim that has some elements in
16 common with previous claims.

17 Q Why don't you take us one element at a time here, and stop
18 as you go through each element and tell me what your analysis
19 is specific to the first element you labeled A in claim nine of
20 the '516 patent.

21 A Yes. Well, this is the collection of catalogs element,
22 and so since there's no collection of catalogs, this element
23 can't be present.

24 Q Why don't you go to the second element you marked as B.
25 Can you explain why, in your opinion, that element is not

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1 satisfied by the Lawson systems?

2 A Yes. B requires a first identification code associated
3 with a first item in a first catalog. If there's no catalog,
4 there can't be a first catalog.

5 Q Let's get to the next slide, number 29, please. This
6 slide is a continuation of the elements of claim nine of the
7 '516 patent; is that right?

8 A Yes.

9 Q Can you tell us about your analysis specific to this
10 element you labeled C, the third element of claim nine of the
11 '516 patent?

12 A Yes. There are at least two reasons.

13 MR. ROBERTSON: I object again. There's a
14 characterization of Dr. Weaver in this slide.

15 MR. McDONALD: How about if we pop up -- I'll
16 withdraw the question, Your Honor.

17 THE COURT: All right.

18 MR. McDONALD: Can we go on the '516 patent,
19 Plaintiff's Exhibit 2, I believe, and put up claim nine.

20 Q We're talking now about the last long element of this
21 claim; is that right, Dr. Shamos?

22 A Not yet. I think we're talking about still first
23 identification code and the second identification code.

24 Q Okay. Let's zero in on this second identification code
25 element then at this point. Can you explain your opinion as to

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1 whether or not the Lawson accused system satisfies that element
2 of claim nine?

3 A Yes. In order for there to be a second identification
4 code, there has to be a second catalog, and even if there's one
5 catalog, there weren't two catalogs in S3. So that element
6 can't be present.

7 Q Is there some language in this element about the second
8 item being, quote, generally equivalent?

9 A Yes.

10 Q Do you have an opinion as to whether in the Lawson system,
11 the Lawson systems accused here, satisfy that part of that
12 element?

13 A There's no notion in the Lawson systems of general
14 equivalents. There's no way to ask the system for a generally
15 equivalent item.

16 Q Do you have an understanding as to what aspect of the
17 Lawson system is dependent in this case to satisfy that part of
18 that element?

19 A Only from expert reports.

20 Q Let's go to slide 30 then, if we can turn to that, Bill.
21 Dr. Weaver, did you look at --

22 MR. ROBERTSON: Dr. Weaver?

23 A I am Shamos.

24 MR. McDONALD: I made it this far today.

25 Q Dr. Shamos, did you look at all at the issue of whether or

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1 not in the Lawson system the use of the UNSPSC codes would
2 satisfy any claim elements of any of the asserted claims in
3 this case relating to generally equivalent items?

4 A Did I look at that?

5 Q What was your conclusion about that?

6 A That it doesn't.

7 Q Why not?

8 A So, the UNSPSC code is a generally accepted international
9 coding to categorize products. There's a big difference
10 between desks and chairs, and so if you gave a code to desks,
11 you could immediately tell that something was a desk and it
12 wasn't a chair. And it happens to be hierarchically organized.

13 That is, it has different levels, so you can get to office
14 furniture, and then within office furniture you could have
15 desks, and then within desks you can desks with drawers or
16 without drawers, et cetera.

17 The Lawson software does provide the ability for a
18 customer to enter UNSPSC codes into the item master database if
19 he wants to do that, and sometimes it's useful for people who
20 are ordering things to know what the UNSPSC code is associated
21 with a particular item, but those UNSPSC codes are not used for
22 the purpose of determining whether things are generally
23 equivalent.

24 There's no automatic conversion. I can't go and say, if
25 you're out of stock of this product, please give me another one

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1 that has the same UNSPSC code. So there's no converting that's
2 going on. There's no matching that goes on with respect to
3 UNSPSC codes even though they may be physically present in the
4 database.

5 Q You have here, and this is another slide we have up on the
6 screen that you prepared; is that right?

7 A Yes.

8 Q On the last point there, what's the last bullet point?
9 Can you explain what you meant by that?

10 A It's only within RSS, not the totality of the systems that
11 are accused. It's only RSS that allows even searching of the
12 UNSPSC code.

13 Q Can we turn to the next slide, please, 31.

14 A Yes.

15 Q Is this another slide you put together, Dr. Shamos?

16 A Well, I put it together, but literally it's copied out of
17 a white paper that was published explaining what UNSPSC codes
18 are. So I didn't write the words that are on the slide except
19 for the title.

20 THE COURT: In other words, you made the slide.

21 THE WITNESS: I made the slide. I had an electronic
22 copy of that white paper. I had it on the screen. I used a
23 photo editor, and I did a screen capture and then cropped it
24 down and stuck it on the slide directly out of that UNSPSC
25 white paper.

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1 Q Can you tell us in a nutshell, Dr. Shamos, what your main
2 point was for putting together this particular slide as it
3 relates to your testimony here?

4 A Yes. It was to show this eight-digit classification of
5 items and why it's hierarchical. This is the UNSPSC
6 explanation of what these codes look like. The code, as you
7 can see at the bottom where it says pen refills equals UNSPSC
8 classification 44-12-19-03.

9 The significance of those numbers, 12, 19, and 03, depend
10 on the fact that they are coming from 44. So 44 is office
11 equipment, accessories, and supplies. Within that, 12 is
12 office supplies. Within 12, 19 is ink and led refills, and
13 within 19, 03 is pen refills. And so what 44-12-19-03 tells
14 you is it's a pen refill.

15 It doesn't tell you what kind of pen, and so if I want to
16 buy a refill for my pen, it's going to have to have -- if
17 there's any UNSPSC classification at all, it's going to have to
18 have 44, 12, 19, 03, but I can't just buy any pen refill. It
19 has to fit in that particular pen. So these UNSPSC codes don't
20 describe substitutable or generally equivalent items.

21 Q Can we turn to the next slide, please, number 32. I think
22 you've essentially already covered the first three bullet
23 points on this slide?

24 A Yes, we can go right to number four.

25 Q What was your point with bullet point number four?

1 A Just -- what the point is, let's suppose a customer does
2 load UNSPSC codes into item master for some reason. They do
3 not become a cross-reference table. For one thing, they don't
4 cross-reference generally equivalent items, but second of all,
5 they're not used by the Lawson system for cross-referencing.

6 Q Then your fifth bullet point here looks like you are
7 talking about two of the claims of the '516 patent; correct?

8 A Yes. We haven't talked about those claims yet, but they
9 both require a cross-reference table. So they are not
10 infringed based on the UNSPSC theory.

11 Q So when we get to those claims, we'll refer to this
12 briefly.

13 A Yes.

14 Q So if we can go to the next slide, number 33, please.

15 A Yes. Well, there's claim 21.

16 Q So can you tell me with respect to this slide 33, let's go
17 to element B here on this slide since that's where you have
18 some of the blue text. Can you explain your opinion of why
19 Lawson's accused systems do not satisfy that second element of
20 claim 21 of the '516 patent?

21 A Yes. Element B requires a collection of catalogs, and
22 we've already talked about there isn't a collection of
23 catalogs. So this catalog collection searching module as
24 defined in this claim can't exist in the S3 system.

25 Q Let's go to slide 34, please. There you've got the third

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1 element that you've marked C in claim 21 of the '516 patent; is
2 that right, Dr. Shamos?

3 A Yes.

4 Q That's a catalog selection criteria used to select less
5 than said entire collection; correct?

6 A Yes.

7 Q Is it your understanding that the collection being
8 referenced there is the collection of catalogs?

9 A Yes.

10 Q Can you explain why, in your opinion, the Lawson accused
11 systems don't satisfy this element of claim 21?

12 A Yes. We already talked about this. This is essentially
13 the same thing as the catalog selection protocol, so you
14 can't -- even if you considered item master to be a collection
15 of catalogs, there's still no way of limiting or selecting less
16 than all of it for searching. So element C isn't present in
17 any Lawson system.

18 Q Thank you. Let's talk about the elements you've marked D
19 here on slide 34. Can you explain what your opinion is related
20 to that one?

21 A Yes. D says, said searching module being used to generate
22 additional search module criteria for said data fields. There
23 aren't any additional search module criteria. There are
24 certain fields that you can search on, and they are not
25 generated by any software. They are set up initially when item

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1 master is set up. So I don't even -- I don't even get how that
2 can be accused.

3 Q Let's go to the next slide then, number 35. Are there --
4 we've got up here what you've designated as elements E and F,
5 basically the fifth and sixth elements of claim 21 of the '516
6 patent; correct?

7 A Yes.

8 Q Are there any additional reasons, in your opinion, that
9 those elements aren't satisfied by the Lawson systems other
10 than the ones you've already talked about?

11 A No.

12 Q Let's move on then to slides 36, the next slide, please.
13 You've got here elements G and H which would be the 7th and
14 eighth elements of this claim 21; is that correct?

15 A Those are the last two elements.

16 Q Do you have any additional reasons for Lawson systems not
17 satisfying these two elements other than the reasons you've
18 already talked about?

19 A Yes. For element G there, at the end of that wherein
20 clause, there's recited, a determination system that located
21 items are generally equivalent. The Lawson system doesn't have
22 any such determination system. It doesn't make a determination
23 that items are generally equivalent, and even if a human being
24 previously had made that determination, there's no way of
25 determining that through the Lawson system.

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1 Q Are there any other new reasons specifically to elements G
2 and H for your opinions?

3 A Well, H requires the cross-reference table I talked about
4 previously with respect to UNSPSC codes. It's not there.

5 Q Anything else new on this slide then?

6 A No.

7 Q Let's go to element -- the next slide, please, number 37.
8 You put this slide together because the slide we've just been
9 talking about. Claim 21 of the '516 patent specifically calls
10 out a cross-reference table; right?

11 A Yes.

12 Q So you've got the Court's construction up here of what a
13 cross-reference table is; is that right?

14 A Yes.

15 Q That's a table that links vendors, items determined to be
16 equivalent between two -- should that be two or more different
17 vendors? It says the word "of."

18 A I think there may have been a typo somewhere. From the
19 point of view of meaning, I think it should be "or."

20 Q And using that definition then, was it your conclusion
21 that the Lawson systems that are accused here don't have that
22 cross-reference table as set forth in claim 21 of the '516
23 patent?

24 A Yes. There's no such table.

25 THE COURT: I think he said that two or three times

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1 already, hasn't he?

2 MR. McDONALD: I'm trying to keep it moving here,
3 Your Honor. If he's covered it, that's fine.

4 Q Let's go to claim 38, or excuse me, slide 38. This is a
5 new claim now we haven't talked about yet, Dr. Shamos; is that
6 right?

7 A Yes.

8 Q This is claim 22 of the '516 patent; correct?

9 A Yes.

10 Q This is a dependent claim from the claim we were just
11 talking about, claim 21; right?

12 A Yes.

13 Q Do you have any additional reasons for non-infringement of
14 that dependent claim beyond what you talked about regarding
15 claim 21?

16 A No.

17 Q Is your opinion that claim is or is not infringed?

18 A It's not infringed.

19 Q Let's go to the next slide, please, 39. This is your
20 slide regarding claim 29 of the '516 patent; is that right?

21 A Yes.

22 Q It looks like your first comments on this slide go to the
23 third element you've designated with the letter C; correct?

24 A Well, it's below letter C, but basically elements A, B,
25 and C are exactly the same as the elements of '516, claim one,

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1 A, B, and C.

2 Q So for the same reasons you talked about for claim one of
3 the '516 patent, those first three elements of your analysis
4 would apply to these three elements; is that right?

5 A Yes.

6 Q Would your conclusion be that those elements are or are
7 not satisfied in the Lawson system?

8 A None of those elements are present.

9 Q Thank you. Let's go to slide number 40, please. This is
10 your slide regarding the fourth element of claim 29 of the '516
11 patent; is that right?

12 A Yes.

13 Q You've got some reasons here why the Lawson systems are
14 not -- or do not satisfy this element; correct?

15 A That's right.

16 Q Can you briefly summarize those reasons for me, please.

17 A Yes. The summary would be that this element D includes
18 pieces that we've already seen before. The various elements
19 are recited in there appeared in previous claims, and I already
20 discussed that they weren't present. That's what's listed at
21 the bottom of the slide in blue.

22 Q So what you've previously discussed are in quotes there,
23 basically, at the bottom of this slide?

24 A Yes.

25 Q So for all those reasons you already gave, is it your

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1 opinion that this fourth element is or is not satisfied by the
2 Lawson system?

3 A It's not satisfied.

4 Q Let's go to slide 41, please. This slide has the fifth
5 and sixth elements of claim 29 of the '516 patent; correct?

6 A Yes.

7 Q Can we take a look at the fifth element. Can you tell us
8 briefly why you have an opinion about that and what it is?

9 A Yes. These elements simply recite other elements that
10 we've previously seen, the catalogs selection protocol and
11 cross-reference table. Since they are not present, these
12 elements aren't present either.

13 Q Thank you. Let's go to slide 42, please. Now, this is
14 turning to a new patent now; right, Dr. Shamos?

15 A Yes.

16 Q So this is the '683 patent. We're going to go through the
17 accused claims in that patent now; is that correct?

18 A Yes.

19 Q So the first claim listed in the '683 patent, that's among
20 the accused claims, claim three?

21 A Yes.

22 Q Why don't you take it from the top here with claim three
23 and your element A and tell us briefly here why, in your
24 opinion, that first element of claim three is not satisfied by
25 the Lawson systems?

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1 A Element A starts out with at least two product catalogs.
2 Lawson does not have at least two product catalogs, so A isn't
3 satisfied.

4 Q What is your opinion about whether element B of claim
5 three of the '683 patent is satisfied?

6 A Element B is a means for selecting the product catalogs to
7 search, and the function of that means is that selecting less
8 than all the catalogs, and Lawson has no mechanism for doing
9 that, so that means cannot exist.

10 Q Can we go to slide 43, please. What are you doing here in
11 this slide, Dr. Shamos?

12 A I'm just giving in black the Court's construction, and
13 blue is my, how I'm relating that to the Lawson system.

14 MR. ROBERTSON: Your Honor, I'm going to object. I
15 think this is inconsistent with the Court's construction.

16 MR. McDONALD: Bill, do you have the actual
17 construction for this means --

18 THE COURT: Just a minute. Let me get mine out.

19 MR. McDONALD: I'll withdrawn the question, Your
20 Honor, and go right to it. I think we can eliminate any
21 issues --

22 THE COURT: Disregard his testimony and the question
23 on that point then, please. That testimony I'm referring to is
24 the comments about having no means for selecting product
25 catalogs to search.

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1 Q Do you see up on the screen, Dr. Shamos, something -- I'll
2 represent to you that's the Court's entire construction of the
3 means for selecting the product catalogs to search for claim
4 three; do you see that?

5 A Yes.

6 Q Did you apply that construction in your analysis here?

7 A Yes.

8 Q Now, there's some reference and some numbers near the end
9 of the Court's definition there. Do you see that?

10 A Yes.

11 MR. McDONALD: And, Bill, I wonder if we can
12 highlight the line with all the columns in it.

13 Q What is your understanding as to what that section of the
14 Court's construction is referring to?

15 A It's showing structure that's disclosed in the
16 specification that correspond to this particular means element.

17 Q The means element is the means for selecting the product
18 catalogs to search; right?

19 A Yes.

20 MR. McDONALD: So, Bill, can you go to the '683
21 patent, to column nine, line 52, which would be the last one of
22 the ones listed there. I would go all the way to the bottom of
23 that column. I think -- can you also grab that part of column
24 ten that goes down to line 20?

25 MR. ROBERTSON: I'm going to object. This is not in

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1 Dr. Shamos's report.

2 MR. McDONALD: Actually it is, Your Honor, paragraph
3 218. And also 233.

4 THE COURT: Wait a minute.

5 MR. ROBERTSON: The Court's claim construction isn't
6 there, Your Honor. That's all that's in it.

7 THE COURT: 218 is the claim construction. 233?

8 MR. McDONALD: Yes. Although I think both are
9 relevant here since he cites them in both paragraphs.

10 MR. ROBERTSON: I do see, Your Honor, 233 does cite
11 to that specification. I think that's what you were
12 identifying, Mr. McDonald?

13 MR. McDONALD: Let me clarify, Your Honor. This is
14 also one of the slides that they had already approved before we
15 came in today.

16 MR. ROBERTSON: I'll withdraw the objection, Your
17 Honor.

18 THE COURT: I think you should. Sorry.

19 MR. McDONALD: Can we put that back up? Let's put
20 up, Bill, column nine, line 52, to column ten, line seven.

21 Q This is a section that's found in all three of the
22 patents; right, Dr. Shamos?

23 A Yes.

24 Q Can you tell us generally what this section of the patent
25 is talking about?

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1 A It describes how you select a catalog.

2 Q Is this section one of the sections of the patent that the
3 Court said was the structure that corresponds to the "means for
4 selecting the product catalogs to search" element of claim
5 three of the '683 patent?

6 A Yes.

7 Q Can you explain to us then how this section of the patent
8 describes selecting product catalogs to search?

9 A I think it's very straightforward. This is showing an
10 example where the database would have four different catalogs,
11 and they are numbered one, two, three, four. They are distinct
12 catalogs, and a mechanism is provided so that the user can make
13 a selection from one, two, three, four, or possibly any subset
14 of one, two, three, four to restrict the search to just those
15 catalogs.

16 Q Did you see anything like that in the Lawson systems
17 accused of infringement in this case?

18 A Not even remotely.

19 Q Let's -- you can take that off the screen, I guess. Can
20 we go back to that slide, the slide we left off at? It's 42.
21 Let's go back to 42. This has the element regarding selecting
22 product catalogs to search; correct?

23 A Yes.

24 Q You looked at the search issue as part of your analysis;
25 correct?

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1 A Well, yes, I looked at the means for selecting part of it.

2 Q I just want to talk generally about the searching that's
3 talked about in this and other claims, the concept of searching
4 for a moment, all right?

5 A Okay.

6 Q Remember in your analysis, you looked at the issue of
7 whether word searches, that you could do keyword searches in
8 the Lawson system, whether that would correspond to selecting
9 catalogs to search or selecting portions of a database to
10 search; do you remember that?

11 A We talked about that yesterday.

12 Q But I think you had some analysis that you had done in
13 your report regarding searching, for example, by color; do you
14 remember that? Searching, for example, red or green or blue?

15 A Only vaguely.

16 Q Well, if you did a search in the Lawson systems for the
17 color red, could you come back with products with an item
18 description that has the word red in it?

19 A Yes.

20 Q Would that mean you just generated a catalog of red
21 products under the Court's claim construction?

22 A No. It would mean that you searched item master and found
23 all the items in which red was used as a descriptor.

24 Q Those are two different things?

25 A Well, yes. The result of the search is a hit list. It's

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1 not a catalog.

2 Q Like the search results you get back from Google; right?

3 A I think that's a good analogy, yes.

4 Q Could we go to slide number 46, please. We're still on
5 claim three of the '683. This is the sixth element; correct?

6 A I lost count, but it's one of the elements.

7 Q Fair enough. Maybe we'll go back briefly to slide 45 with
8 the element that's designated F there. That's the element that
9 refers to means for converting data relating to a selected
10 matching item; correct?

11 A Yes.

12 Q Actually, I've lost track as well. I don't think we've
13 gone through this slide. Do you recall if we've talked about
14 it?

15 A We haven't.

16 Q So can you tell me what your opinion is as to whether or
17 not the Lawson system satisfies that element F that you have
18 identified on this slide in claim three of the '683 patent?

19 A Yes. It doesn't. There's no means for converting in the
20 Lawson system.

21 Q And does your reasoning for that relate to your analysis
22 of the UNSPSC codes that you've already talked about, or is it
23 something else?

24 A Well, it's possible in the Lawson system that there are
25 different items that come from different sources, it can be

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1 supplied from different sources, so this element F is talking
2 about the means for converting data related to a selected
3 matching item and an associated source to data relating to an
4 item and a different source. There's nothing in the Lawson
5 system that does that conversion.

6 MR. McDONALD: Bill, could we put up the Court's
7 construction of means for converting data related to a selected
8 matching item.

9 Q The last one on this page. Dr. Shamos, in reaching your
10 conclusion that the Lawson systems accused here don't satisfy
11 this element of claim three relating to a means for converting
12 data, did you analyze this Court's construction regarding the
13 function of that element as well as its corresponding
14 structure?

15 A Yes.

16 Q Let's move on then to slide number 47, please. So now
17 we're done with claim three. So for all those reasons you just
18 gave, Dr. Shamos, is it your opinion that claim three of the
19 '683 patent is or is not infringed by any of the Lawson
20 systems?

21 A It's not infringed because many of the elements are
22 missing.

23 Q Let's move on now to claim 26. This is a method claim; is
24 that right?

25 A Yes.

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1 Q Here on slide 47, you again broke the steps of that method
2 claim into A, B, and C parts; correct?

3 A Yes.

4 Q Can you take us one at a time here and explain the
5 reasoning as to why the Lawson systems do or do not satisfy
6 those elements?

7 A Yes. A requires maintaining at least two product
8 catalogs, and Lawson systems don't maintain at least two
9 product catalogs.

10 Q For all the reasons you've already talked about; right?

11 A Yes.

12 Q Okay, let's go to the next one.

13 A B, selecting the product catalogs to search, even if there
14 were catalogs in the Lawson system, you can't select them for
15 searching. There's no mechanism to do that.

16 Q So that keyword searching, does that satisfy the selecting
17 the product catalogs to search function or not?

18 A It doesn't select a catalog.

19 Q How about for the third element of claim 26?

20 A In order to perform the step of searching for matching
21 items among the selected product catalogs, you have to have
22 selected product catalogs which means you have to be able to
23 select, and you can't do that in the Lawson systems, so you
24 can't perform the searching step.

25 Q These are all reasons you've already gone over; right?

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1 A Almost.

2 Q Is there something a little new about this element?

3 A Just a little new. It says, searching for matching items
4 among the selected product catalogs. You can do searching in
5 the Lawson system, but you can't search among the selected
6 product catalogs.

7 Q Let's go to slide 48, please. You have there the last
8 three elements of this method claim 26; correct?

9 A Yes.

10 Q Can you explain to us your analysis relating to those
11 three elements?

12 A Yes. These are steps that are performed -- if at all,
13 they are performed by the user, they are not performed by
14 Lawson. Lawson has no idea what somebody wants to requisition.
15 Lawson has no idea what the inventory levels are of somebody's
16 inventory.

17 Q Okay. But these are reasons for non-infringement in
18 addition to the reasons that you already listed for the first
19 three elements of this claim; correct?

20 A This has to do with who performs the steps.

21 Q Regardless of who performs the steps, is your reasoning
22 regarding catalogs and selecting product catalogs, would they
23 be sufficient or not sufficient to say that this method isn't
24 performed by anybody?

25 A Well, element D requires selected matching items. Since

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1 there weren't selected matching items, you can't perform step
2 D. Step E requires selected matching items. If you don't have
3 those, you can't perform step E. And step F requires selected
4 matching items, and if you don't have a selected matching item,
5 you can't perform step F. So nobody can perform them, but even
6 if somebody did, it's not Lawson.

7 Q Let's go to slide 49, please. This is, looks like -- I
8 think we have a little disconnect on the heading for this one.
9 It says claim 28, but the number is claim 26. How about if we
10 pop up the claim itself from '683 just to make sure -- claim 28
11 of the '683 patent.

12 Dr. Shamos, I'm going to try to work from the claim in the
13 patent itself. If you need to refer back to your slides, let
14 me know, and we can go back to that?

15 A I don't think it will be necessary.

16 Q Can you summarize here your opinion as to whether or not
17 Lawson system or the use of that system would --

18 THE COURT: Mr. McDonald, excuse me. It might be
19 easier for the jury to follow things if we just assume that 26
20 is the 28 and use the slide. Is there any reason you can't do
21 that, Mr. Robertson?

22 MR. ROBERTSON: No, that's fine, Your Honor.

23 THE COURT: Just go back to the slide there. I think
24 it may be easier to follow. I think the -- right there. Take
25 that, and then you can use that. That's fine.

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1 THE WITNESS: I think that's right.

2 THE COURT: This slide relates and his testimony is
3 relating to claim 28 which is in column 27 of the '683 patent,
4 okay. Go ahead.

5 MR. McDONALD: That was my attempt to make a 28 which
6 didn't turn out very well.

7 THE COURT: Oh, I thought you were marking it out.

8 Q Dr. Shamos, can you summarize your opinions relating to
9 whether or not the use of the Lawson systems would infringe
10 this method claim 28 of the '683 patent?

11 A Yes. For element A, Lawson does not maintain at least two
12 product catalogs, so that step isn't performed. The Lawson
13 system doesn't allow selecting the product catalogs to search,
14 so step B can't be performed.

15 Q You've already talked about that one as well?

16 A Yes. I've already talked about C also.

17 Q C goes to no selected product catalogs?

18 A That's right.

19 Q Let's go to slide 50, please.

20 A Right. This is the same for the previous claim except for
21 step F. Step F is a converting data step. They all -- steps D
22 and E refer to selected matching items. If you don't have
23 selected matching items, you can't perform those steps.

24 Q That is whether you are Lawson or anybody else?

25 A That's right. Nobody can perform those steps. And

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1 likewise, F is now -- that's a new step. It's a converting
2 data step. That also requires selected matching items, but
3 even if these were performed, they are not performed by Lawson.

4 Q Is this converting data element, does that, again, relate
5 back to the UNSPSC codes issue, or is that something else?

6 A I understand that's plaintiff's theory.

7 Q So for all the reasons you already gave about that issue
8 as well, nobody would be practicing that last element of claim
9 28; is that right?

10 A Yes.

11 Q Let's go to slide 51, please. This is your slide
12 regarding claim 29 of the '683 patent; is that right?

13 A Yes.

14 Q Is claim 29 a dependent claim?

15 A Yes, it depends from 28.

16 Q So do you have -- all your reasons regarding claim 28
17 apply here to claim 29; right?

18 A Yes.

19 Q Do you have any additional reasons for claim 29?

20 A Yes.

21 Q What is your additional reason?

22 A Lawson itself has no way of determining whether any item
23 is in a customer's inventory. Only the customer can determine
24 that. So if that step is performed at all, it's not performed
25 by Lawson.

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1 Q Let's go now to slide number 52. This is the last of the
2 asserted claims as we've gone through today; correct, Dr.
3 Shamos?

4 A Yes.

5 Q '172, claim one; right?

6 A Yes.

7 Q I think we talked about this yesterday to some extent, but
8 let's see if we can not repeat anything from yesterday. But
9 can you summarize here as we go through element by element what
10 your opinion is as to whether or not any of the Lawson systems
11 accused in this case satisfy that first element of claim one of
12 the '172 patent?

13 A Yes. So the first element is a database containing data
14 relating to items associated with at least two vendors
15 maintained so that select portions of the database may be
16 searched separately.

17 Now, I'm familiar with the structure of the item master
18 database which is a relational database that contains a number
19 of tables, one of which happens to be called item master. Item
20 master is a single table. It is not maintained so that any
21 piece of it can be searched separately. When a search is
22 performed on item master, it's all of the item master that is
23 searched. And so there are no portions, and there is no
24 element A in Lawson's system.

25 Q As part of your analysis in this case, did you review any

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1 of the searches that Dr. Weaver had performed regarding the
2 word Dell?

3 A Yes.

4 Q Could we pop up Plaintiff's Exhibit 363, please. Do you
5 recall looking at some shots of the screens of a -- I guess I
6 might have misstated that. I don't know that Dr. Weaver
7 performed it or somebody else performed it for him, but this
8 was from Dr. Weaver's materials. Do you remember seeing
9 snapshots as he progressed through some clicking through the
10 Lawson systems accused here?

11 A Yes.

12 MR. McDONALD: Okay. Can we go up to -- I think it
13 would be page 31 of which slide, Bill.

14 Q Do you recall, Dr. Shamos, seeing -- there was -- there
15 you go. Seeing in the search here a snapshot showing somebody
16 putting in a search term?

17 A Yes.

18 Q And is this what we have highlighted up on the screen
19 here? Is that a portion of a Lawson screen where you could do
20 a search?

21 A Yes.

22 MR. McDONALD: And actually, Bill, can we grab that
23 so we can get the blue part, too.

24 Q Can you tell by looking at this, Dr. Shamos, which module
25 of the Lawson system we're in?

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1 A We're in the search module.

2 Q I'm just going to underline something here. I see a
3 reference to RSS. Does that mean we're talking about that
4 requisition self-service module here?

5 A I think so.

6 Q Now, can you point at where you type in the search term
7 that you want to search here on the screen?

8 A It's in that search bar.

9 Q There's some reference down below that -- I'm going to put
10 a parenthesis around that -- to search all fields; do you see
11 that?

12 A Yes.

13 Q There's a checkmark in that box; do you see that?

14 A Yes.

15 Q What does that mean?

16 A A record in item master has a number of fields associated
17 with it; for example, description of product, inventory load
18 product, manufacturer's part number of product, things like
19 that. And what that checkmark is saying is I want to look for
20 the word Dell in every field in the table.

21 Q Is one of the fields you can look at vendor?

22 A No.

23 Q So you can search lots of fields here, but you can't
24 search for a vendor here; correct?

25 A There's a list over on the right. If I didn't check

1 search all fields, then I would go over to the right and check
2 the fields that I wanted to search. And so that's a list of
3 them, and vendor isn't there.

4 MR. McDONALD: Can we go to the next page of this
5 exhibit, please, maybe blow up the left half of that page.

6 Q What is your understanding of what's on this page of this
7 demonstration, Dr. Shamos?

8 A Well, this was the result of the processing of the search.
9 This is the hit list, and actually I think this makes it very
10 clear. If you look at the -- starting with the second column
11 that says quantity -- actually start with the third column that
12 says item and then description and then UOM, which is unit of
13 measure --

14 THE COURT: Are you using the first example there,
15 Dr. Shamos, first thing on the hit list?

16 THE WITNESS: I was actually referring to the entire
17 rectangle that's at the bottom that has a set of headings at
18 the top. One says, add to cart and then quantity and then item
19 description, unit of measure.

20 THE COURT: Can we blow up that first level there.

21 THE WITNESS: Yeah, blow up the first level with the
22 first set of hits.

23 THE COURT: Can you read that a little bit better,
24 ladies and gentlemen?

25 THE WITNESS: This is the first hit among search

1 results, and what's shown up at the top after add to cart and
2 quantity, those are things it's asking the user to subsequently
3 enter.

4 So if I want to buy one or more of this particular
5 item, I would put -- I would click in there, and a checkmark
6 would appear, and then I could specify in the quantity field
7 how many of them I wanted. But let's look at what the actual
8 results of the hit are. Under the description field, it says
9 Dell, comma, Dimension 8100.

10 What that means is that whoever put the description
11 of that computer into the database decided that they wanted to
12 put in the string Dell because they want to identify it was a
13 Dell computer. But if you look at what the field is, the field
14 isn't a vendor field. The field is a description field. You
15 can put anything you want in there.

16 When you do a search for where Dell appears, it may
17 be that if the customer was really meticulous and they very
18 carefully put a vendor -- sorry, manufacturer for every one of
19 the items in the database, then you could retrieve all of the
20 items that were from Dell. But you still had to search all of
21 item master in order to do it. It's not restricting the search
22 to selected portions. It's searching the whole database.

23 Q So if we move on then, go through the -- can we go to page
24 34 of this Exhibit 363, Bill. I just wanted to show, this is
25 the same search results, I believe, Dr. Shamos, but they've

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1 moved this scroll bar down so you can see the last two items
2 that were returned from the results.

3 A Yes.

4 Q So we got a total of six items on this Dell search. Does
5 that ring a bell?

6 A That sounds right.

7 Q So now if we go up to page -- so this is just searching
8 the word Dell, we got back six items that had the word Dell in
9 the description line basically; right?

10 A Yes.

11 Q Now, can we jump ahead to page 48 of 363? So we've still
12 got that search result up on this slide, but now if we go to I
13 think the next slide or next page, 49, this is capturing -- you
14 can see in the upper left corner, they are in the middle of
15 typing in some additional words into that word search, and
16 they've now added a comma after the word Dell and starting to
17 type Dimension; do you see that?

18 A Yes.

19 Q Jump up just two more slides up to page 51. So this was
20 the part of the demonstration where the word search had Dell
21 comma Dimension 8100; correct, Dr. Shamos?

22 A Yes.

23 Q And what does it mean below that to have what I'm putting
24 in parentheses here, search all fields?

25 A The same thing as it meant before. It means look at every

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1 field in item master to see if it contains the string Dell
2 comma Dimension 8100.

3 Q So what actually happens in the Lawson system when the
4 user types in that search, Dell comma Dimension 8100?

5 A Searches the whole database. And, in fact, it's clear
6 from the way the user put in that search that the user had some
7 very specific understanding of how elements are coded into this
8 database.

9 Q Why --

10 A If I were looking for a Dell Dimension, I would never put
11 a comma after the word Dell.

12 Q What do you think that implies here, that the person doing
13 this demonstration put a comma after the Dell?

14 A It means he knew how the database was structured, and he
15 knew whoever put in the manufacturer name put a comma after the
16 manufacturer name.

17 Q Let me put --

18 A Because if you search for Dell Dimension without a comma,
19 you probably wouldn't get any hits.

20 Q And I've put a very crude arrow there down by the
21 description column for the first of the two items returned
22 here. Do you see that?

23 A Yes.

24 Q And then the description there, can you me whether or not
25 there's a comma after the Dell?

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1 A Yes, it is. That's why this was a responsive hit.

2 Q So if the user had put in the word Dell Dimension 8100
3 without a comma, do we know whether or not we would have got
4 these results back?

5 A I don't know, because I don't know if there any fields
6 that happen to be coded that way, but we certainly wouldn't
7 retrieve these items that were retrieved.

8 Q So is what's shown on the screen right now, was that
9 search of Dimension 8100 just in a portion of the item master
10 that had Dell products or not?

11 A No. It's the whole item master.

12 MR. McDONALD: Okay, take that one off. Can we turn
13 to page 52 now of Dr. Shamos's slides.

14 Q So, Dr. Shamos, I think we touched on this yesterday, but
15 I want to come back to it now that we've gone through that
16 demo, that set of demo slides.

17 With respect to claim one of the '172 patent, can you tell
18 us what your opinion is about element of A of that claim as
19 shown here on slide 52?

20 A Yes. The database is not maintained so that selected
21 portions can be searched separately. The search is over the
22 entire database. There are no portions of the database.
23 Furthermore, there's no way to select portions of the database.
24 Even if there did exist portions, they can't be selectively
25 selected, and you can't search item master by vendor.

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1 Q So for all those reasons, element A of claim one of the
2 '172 patent, in your opinion, is not infringed?

3 A Correct.

4 Q All right, can we turn to element B here.

5 MR. McDONALD: Give me a moment, Your Honor. Let's
6 go to slide 53, please.

7 Q Is this a continuation of your analysis of claim one of
8 the '172 patent, Dr. Shamos?

9 A Yes.

10 Q Can you summarize your opinions as set forth on this
11 slide?

12 A Yes. C is a means for searching, but it requires selected
13 portions of the database. There are no selected portions, so
14 the means can't exist.

15 Q Okay. And then the next element, that's the means for
16 generating order list that includes at least one matching item
17 selected by said means for searching; correct?

18 A Yes.

19 Q And what was your conclusion regarding that element?

20 A We talked about order list yesterday. Lawson doesn't
21 generate an order list, but even if it did, it has -- would
22 have to include at least one matching item selected by said
23 means for searching, but the means for searching doesn't exist,
24 so the means for generating can't exist either.

25 MR. McDONALD: Can we go, Bill, back to the Court's

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1 construction of the claims and specifically the one for means
2 for generating order list here in claim one of the '172 patent?

3 Q So this is the function as the Court construed the
4 function and then the description of the structure as well as
5 the examples of the structure set forth in the patent itself;
6 right, Dr. Shamos?

7 A Yes.

8 Q So, you see there's a reference there to the section
9 between column four, line six, and column six, line 28?

10 A Yes.

11 MR. McDONALD: Can we, Bill, put up the '172 patent
12 starting at column four, please, line six, and basically
13 continuing from there. Actually down -- maybe about halfway
14 down.

15 Q This is a section of the patent here, Dr. Shamos, that was
16 referred back in that Court's construction of the means for
17 generating an order list; correct?

18 A Yes. It's exemplary of that.

19 Q And you see there there's some discussion of figure 1A?

20 A Yes.

21 MR. McDONALD: Bill, could we put up figure 1A?

22 MR. ROBERTSON: Your Honor, I'm sorry. I may be
23 confused here, but are we looking, Mr. McDonald, at '172 or
24 '683, the specification here? I don't think these lines are
25 correspondent, but I may be mistaken.

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1 MR. McDONALD: I think we're in the right place.

2 THE COURT: You do think or don't think?

3 MR. McDONALD: I believe we are in the right place.

4 THE COURT: Which column is this in '172?

5 MR. McDONALD: Column four.

6 THE WITNESS: The Court's construction, which
7 specification was it making reference to?

8 MR. McDONALD: Maybe we should go back to that.

9 THE COURT: Wait just a minute, Dr. Shamos. I'm not
10 sure whether there's still and issue to be resolved.

11 MR. ROBERTSON: We have the '683 patent on the
12 screen, and I believe we were talking about the '172 patent,
13 and so the Court has the columns and line numbers in the
14 corresponding structure in its construction.

15 I just think we should be working off the '172 patent
16 that actually has the specific columns and lines that the Court
17 has cited.

18 THE COURT: But it's the same text, isn't it?

19 MR. ROBERTSON: It's the same text, Your Honor, but
20 not the same column and line numbers.

21 THE COURT: I understand. I'm just trying to
22 understand. So let's just go to the '172 patent and find the
23 same text.

24 MR. McDONALD: Bill, can you go back to the Court's
25 construction of the means for generating an order list. So we

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1 want to go to the '172 patent, column four, line six. Can we
2 do that now?

3 Q All right, so pretty much the same stuff, right, Dr.
4 Shamos, we were looking at a moment ago?

5 A It should be identical stuff.

6 THE COURT: Situated differently because of some of
7 the spacing on the first page.

8 THE WITNESS: Yes.

9 THE COURT: And the figures.

10 Q So there's a reference there, you see, to figure 1A?

11 A Yes.

12 Q And you did look at figure 1A as part of your analysis in
13 this case?

14 A Oh, yes.

15 MR. McDONALD: Bill, could you put up figure 1A of
16 the '172 patent, please.

17 Q Dr. Shamos, can you explain what is it about figure 1A --
18 and this figure 1A, by the way, that's the same in all three
19 patents; right?

20 A Yes.

21 Q Can you tell us what it is about figure 1A that
22 contributed to your analysis of why the Lawson systems don't
23 have catalogs?

24 MR. ROBERTSON: I object, Your Honor. It's the
25 claims that control, not a figure in the patent. That's a

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1 preferred embodiment, and so the Court's construction should
2 control here.

3 MR. McDONALD: Of course, but he's obviously one of
4 ordinary skill reading the patent as part of his analysis. I
5 think we should be able to show the jury a figure from the
6 patent to help them understand the analysis. That is in his
7 report.

8 THE COURT: I think I've ruled on this earlier. He
9 can use the figure 1A because it is a preferred embodiment.
10 But, remember, what controls is the claims. He's offering this
11 to explain to you why he reached certain conclusions, and you
12 need to also keep in mind that the preferred embodiment is one
13 way of practicing the invention of the patent, but it's not the
14 only way.

15 He's using this example to help explain his opinion,
16 and you can consider it for that purpose, mindful that there
17 can be many other ways of practicing the claims in the patent
18 that are not the preferred embodiment or any embodiment for
19 that matter. All right, go ahead.

20 MR. McDONALD: Thank you, Your Honor.

21 Q Dr. Shamos, you have in front of you on the screen there
22 figure 1A from specifically here the '172 patent, but it's the
23 same in the other ones. Can you point on the screen here to
24 where the catalog database is located?

25 A Well, it's number 36. It's around here somewhere. For

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1 some reason, it's not responding much to my touches.

2 Q You have to push pretty firmly to get it to pay attention
3 to you, I found out. So that's the catalog database as set
4 forth and described as the preferred embodiment in the patents;
5 is that right?

6 A Yes.

7 Q Now, in the preferred embodiment, as shown here in figure
8 1A, does it show some other databases that aren't represented
9 to be catalogs?

10 A Yes.

11 Q Can you point to a few of those?

12 A There, up at the top here, the 42s, 42A, 42B, and 42C.

13 Q Now, you see an arrow just to the left of those that comes
14 out of the number 40 with the word RIMS below it?

15 A Yes.

16 Q What is your understanding as to what that means, what it
17 means to one of ordinary skill?

18 A This is all part of RIMS.

19 Q Are you familiar with the RIMS system at all?

20 A Yes.

21 Q How did you get familiar with that?

22 A It was described in a printed patent. There's literature
23 about it.

24 Q Was the application for that RIMS patent, was it or was it
25 not incorporated by reference into the patents-in-suit?

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1 A It was.

2 Q Do you have an understanding as to whether or not the RIMS
3 system had a parts master in it?

4 MR. ROBERTSON: Your Honor, I'm going to object. Now
5 we are talking about another patent and another invention, and
6 now it's getting, if it hasn't stepped over the line already,
7 very close to contradicting what the Court's construction is
8 here of the '172.

9 MR. McDONALD: I don't know what he's taking about.
10 We're talking about this figure and what the figure means.
11 Based on information incorporated by reference into the
12 patents-in-suit. We are talking about the patents-in-suit
13 here.

14 THE COURT: Okay, but my recollection is that the
15 incorporation by reference is of a different document, not RIMS
16 as shown in 40, that it has a particular term, and I'll have to
17 go back and look at it, but I thought we dealt with this once
18 before and I told you what you could or couldn't do, but let me
19 go look.

20 Fisher RIMS is the patent number '571 -- is the
21 abbreviation for the patent 5712989. Fisher RIMS, not RIMS,
22 Fisher RIMS, and that's not shown in the figure, and I think
23 that you have to establish whether he understood -- what he
24 understood before he can testify to anything.

25 I'm not going to rule on the objection, but there's a

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1 significant difference in short-forming something Fisher RIMS
2 and calling it RIMS, particularly in view of the record we have
3 in this case.

4 MR. McDONALD: Let me lay a foundation for that, Your
5 Honor. Can we go back to column four of the '172 patent, Bill.
6 Go to line one, I think, just to make sure we capture
7 everything and the first third of the column.

8 Q I have a little arrow here, Dr. Shamos, that I've drawn at
9 column four beginning at about line six. Do you see there
10 where it says electronic sourcing system five also includes a
11 requisition system 40, preferably but not necessarily the
12 Fisher RIMS system; do you see that?

13 A Yes.

14 MR. ROBERTSON: Objection, Your Honor. That was
15 exactly Your Honor's point, preferably but not necessarily the
16 Fisher RIMS system.

17 MR. McDONALD: I don't think that was your point,
18 Your Honor. I think the point is, what is 40 representing
19 here.

20 THE COURT: The objection is premature. You haven't
21 asked the question yet.

22 Q Do you see that sentence, Dr. Shamos?

23 A Yes.

24 MR. McDONALD: All right, if we go back to column one
25 of the '172 patent, please. Can you blow up column one, Bill,

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1 about the first third of it or so. Right about there.

2 Q Do you see there about line 19 or so, Dr. Shamos, that it
3 refers to, quote, Fisher RIMS as what's described in that US
4 patent number 5712989?

5 A Yes.

6 Q So if we go back to column four now of the '172 patent up
7 at line eight or so, is it pretty clear here that that system
8 40 is preferably but not necessarily the Fisher RIMS system as
9 described in column one?

10 MR. ROBERTSON: I object to the leading, Your Honor,
11 and I also object to the fact that it says, is a requisition
12 system 40 preferably but not necessarily Fisher RIMS.

13 THE COURT: Yes, and that was his question.

14 Overruled. Don't lead. Just ask him what he understands. The
15 cat is out of the bag now, but don't do that anymore.

16 MR. McDONALD: Can we scroll a little further down,
17 Bill, grab maybe the next five lines or so, column four.

18 Q Do you see there, Dr. Shamos, the sentence beginning on
19 line 15 of column four where it says, Fisher RIMS system 40 is
20 comprised of numerous program modules and lists several numbers
21 connected with that number 44; correct?

22 A Yes.

23 MR. McDONALD: And can you scroll down a little
24 further now, Bill. Grab -- get down to that line 25 and get a
25 few more lines.

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1 Q Can you see her beginning at about line 25 of column four,
2 Dr. Shamos, where it says Fisher RIMS system 40 also includes
3 several Fisher RIMS databases 42?

4 A Yes.

5 Q Then goes it on to list that that preferably includes
6 requisition databases 42A, inventory databases 42B, and
7 customer-specific databases 42C, each maintained within OS/2,
8 operating system 32?

9 A Yes.

10 Q Is it your understanding that --

11 THE COURT: What is your understanding?

12 Q What is your understanding as to whether or not those
13 databases 42, as shown in figure 1A, are the databases from the
14 Fisher RIMS system?

15 A I think that one of skill in the art looking at this text
16 and figure 1A would understand that figure 1A is a preferred
17 embodiment, and the description in this column four says that
18 preferably RIMS is the Fisher RIMS system. So it's describing
19 a preferred embodiment.

20 THE COURT: Preferably but not necessarily.

21 THE WITNESS: Correct. One could understand that
22 something else could be substituted for the word RIMS in figure
23 1A, but as it stands, RIMS, as used in this patent, refers to
24 Fisher's RIMS system.

25 Q Can we return to figure 1A now.

1 THE COURT: Excuse me. Do you -- that wasn't what
2 the question was. It's not as used in the patent. It's as
3 used in figure 1A, and I'm going to limit the answer to that,
4 because that's all this is, is what's in figure 1A.

5 And the other thing is we're getting so far into the
6 Fisher that you're trenching on the Court's construction here.
7 Let's move on now. Fisher and this patent aren't the same
8 thing. They are different, and if this patent is not -- you
9 know, we're not getting into that for purposes of infringement.
10 If it has some other issue, then we'll deal with it later, but
11 let's go.

12 MR. McDONALD: I agree, but I think figure A1 will
13 help understand --

14 THE COURT: I know, but, Mr. McDonald, he didn't
15 do -- he went beyond where the question went. You were asking
16 about figure 1A. Then he incorporated it into the whole patent
17 which includes the claims and everything else, and that isn't
18 right. That's what his answer said.

19 MR. McDONALD: His answer was very clear. I thought
20 he was talking about the preferred embodiment, Your Honor.

21 THE COURT: No, he said -- he slipped from the
22 preferred embodiment to the patent, and the patent is a whole
23 lot more than figure 1A, and figure 1A has a specific meaning.
24 So his answer can stand as to figure 1A but not as to the
25 patent.

Shamos - Direct

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1 Let's move on to something else now because you are
2 getting in an area that's going to engender confusion and delay
3 because there's going to have to be a lot more testimony that
4 will come in if we keep up with this approach, and I think I've
5 told you that a couple times, so let's go.

6 MR. McDONALD: Your Honor, will I at least be able to
7 go through that with the inventors when I call them back?

8 THE COURT: I don't rule in apprehendo. We won't
9 take the time until that comes up. I don't think it's a proper
10 thing to do at this point.

11 Q Why don't we go back to your slides, Dr. Shamos, slide --
12 let's go to slide 55, actually, at this point, continue with
13 claim one of the '172 patent. I think we're getting near the
14 end here.

15 Can you summarize for us the reasons for your opinion that
16 claim one of the '172 patent is not infringed with respect to
17 these elements E and F that are on page 55 of your slides?

18 A Yes. These are not new reasons. We've already talked
19 about the order list. Since there's no order list, there can't
20 be selected matching items on said order list, and for means F,
21 since there are no selected matching items on said order list,
22 you can't generate purchase orders from them. So neither of
23 those means is present in the Lawson system.

24 Q Dr. Shamos, did you also look at the Lawson punchout,
25 procurement punchout module as part of your analysis?

Shamos - Direct

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1 A Yes.

2 Q Turn to slide 56, please. Now, in your opinion, does the
3 Lawson procurement punchout module combined with the other, any
4 of the other Lawson modules we've talked about, does that
5 infringe any of the asserted claims in this case?

6 A No.

7 Q Why is that?

8 A Well, what punchout basically does is allow you to jump --
9 in fact, I think the letters O-U-T in punchout mean you are
10 leaving the Lawson system, and you're going somewhere else.
11 You're going to a vendor's website, and the vendor can maintain
12 up-to-date information about products it has available. The
13 vendor can provide search capabilities so you can look around
14 for product that you want might want to buy from there, and
15 that search capability has nothing do with the Lawson system.
16 It's maintained completely separately by the vendor, and the
17 Lawson system doesn't even know what search capabilities are
18 available at punchout.

19 Q What is it that the Lawson system does do to facilitate
20 the punchout process, if anything?

21 A I think it provides a link whereby you can jump to a
22 vendor system.

23 Q Can you get information back from the vendor system?

24 A Yes.

25 Q Is it your understanding that in the accused punchout

Shamos - Direct

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1 configurations -- let me ask it this way: Are there any item
2 related databases at issue when a customer is using a Lawson
3 system with a punchout function?

4 A I didn't understand the question.

5 Q Okay. Well, you were mentioning a search functionality.
6 Let's come back to that. What was being searched when you
7 talked about the search functionality? What did you have in
8 mind was being searched in punchout?

9 A Well, when you invoke punchout, you're actually literally
10 visiting another vendor's website, and if that vendor provides
11 a search capability, then you can do searching at the vendor
12 website.

13 Q What are you searching for at the vendor website?

14 A Presumably you are searching for products that meet some
15 descriptor that you've got, so if I'm looking at office
16 supplies, I can -- assuming that Office Depot is one of the
17 punchout vendors, I can go to the Office Depot site, and I can
18 look for -- I can type in pen refills, and whatever pen refills
19 Office Depot is offering will show up on the search screen
20 that's being produced by the vendor website.

21 Q Did you see any functionality or mechanisms or anything as
22 part of the Lawson system that would give the Lawson system any
23 control over either the search functions at the vendor websites
24 or the data at the vendor websites being searched?

25 A There isn't any such.

Shamos - Direct

1862

1 Q Why is it that information that you've been describing
2 here would lead one to conclude that the punchout configuration
3 doesn't infringe any of the asserted claims?

4 A Well, because if you look at the elements of the asserted
5 claims, it doesn't fill in the missing element. There's no
6 claim that would be infringed because of punchout that isn't
7 already not infringed without punchout.

8 Q There's a lot of negatives. I'm not sure if I followed
9 that, but with respect to the claims that require catalogs or
10 databases, that's all of them; right? They either require
11 catalogs or databases?

12 A Yes.

13 Q In the punchout configuration, does the Lawson system have
14 any catalogs or databases?

15 A No. The vendor has databases. I mean, there are lots of
16 databases in the world. The world has more than one catalog,
17 but the world is not incorporated in the Lawson system.

18 Q I'd like to turn finally here to the inducement and
19 contributory infringement issues, Dr. Shamos. Did you also
20 look at those issues?

21 A Yes.

22 Q What opinion did you reach regarding whether or not Lawson
23 induces infringement of any of the 12 asserted claims?

24 A Well, I don't think any of the asserted claims are
25 infringed, so without an infringer, there can't be inducement

Shamos - Direct

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1 of infringement.

2 Q What is your opinion as to whether or not Lawson performs
3 any contributory infringement with respect to any of the 12
4 asserted claims?

5 A Contributory infringement requires that there be a direct
6 infringer. Without a direct infringer, you can't be a
7 contributory infringer.

8 Q Dr. Shamos, I'll just ask you here, because I think I'm
9 near the end, have I missed any important points from your
10 analysis and opinions in this case regarding non-infringement
11 that we haven't already covered?

12 MR. ROBERTSON: Objection, Your Honor. That calls
13 for a narrative.

14 MR. McDONALD: That's a yes or no question, Your
15 Honor.

16 THE COURT: That is a yes or no question.

17 Q Just yes or no, Dr. Shamos.

18 A No.

19 MR. McDONALD: I have no further questions. Thank
20 you, Dr. Shamos.

21 THE COURT: I think it's time, ladies and gentlemen,
22 to take our morning recess. Take your notebooks with you.
23 We'll take -- I think we're going to take about 30 minutes
24 because I need to talk to the lawyers while you all are out,
25 and then we need a little break, too.